



UNITED STATES PATENT and TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 21

In re application of
Cameron, et al.

Serial No. 09/129,113

Filed: August 4, 1998

For: PHOTORESIST COMPOSITIONS AND METHODS AND ARTICLES OF
MANUFACTURE COMPRISING SAME

DECISION ON
PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed March 1, 2003 for failure to properly respond to the office action dated February 8, 2001. Applicants assert that a Notice of Appeal was filed properly on October 7 2002 in response to the examiner's Final Rejection dated May 6, 2002.

DECISION

The petitioner asserts that the Applicants had properly responded to all office actions, a review of the petitioner's evidence provided with the instant petition indicates that the request does not have merit.

A summary of the case history is, starting from February 8, 2001, a non final rejection was mailed and received by applicants'; on August 8, 2001 a three month extension and Notice of Appeal was timely filed; on March 8, 2002 a five month extension of time was filed *along with a SECOND request for CPA*. The CPA was processed (incorrectly) as an RCE. A final rejection was mailed to applicants' on May 6, 2002 (incorrectly). Then, the final rejection was vacated on December 2, 2002 and a Notice of Abandonment was also mailed.

Applicants' simply argue that the holding is erroneous and prosecution should continue based on the enclosed amendment. Further, it is improper since applicant' relied on the issue office action of May 6, 2002, which was vacated without prior notice.

Applicants' arguments are not persuasive since applicants' improper submission of a 2ND REQUEST FOR CPA (continued prosecution application) were clearly and unarguably improper. Application filing requirements under 37 CFR 1.53 - Continued prosecution (nonprovisional) application are

(1) A continuation or divisional application (but not a continuation-in-part) of a prior nonprovisional application may be filed as a continued prosecution application under this paragraph, provided that:

(i) The prior nonprovisional application is either:

(A) A utility or plant application that was filed under 35 U.S.C. 111(a) before May 29, 2000, and is complete as defined by § 1.51(b); or

(B) A design application that is complete as defined by § 1.51(b)

The improper request for CPA is then treated as a request for continued examination (RCE) under 37 CFR 1.114. However, such a request was also improper since it lacked the fee required by 37 CFR 1.17(e) and/or the submission required by 37 CFR 1.114. No claims were allowed and the required submissions were not submitted by applicant, the case is properly abandoned, March 8, 2002.

The Petition is **DENIED**.

Applicants' have requested that if the above request is denied, then the petition be treated as a Petition to Revive under 37 CFR 1.137(b). In view of the denial above, the case is being FORWARDED TO THE OFFICE OF PETITIONS.



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